

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Northern District of California

In re DMCA Subpoena to StarMaker Interactive Inc.

Plaintiff

v.

Civil Action No.

Defendant

CV 18 80068 MISC.

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

EDL

To:

StarMaker Interactive Inc.
520 Hampshire St., Ste. 202, San Francisco, CA 94110

(Name of person to whom this subpoena is directed)

☒ **Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See attached Exhibit A

Place: Goodwin Procter, LLP
135 Commonwealth Drive
Menlo Park, California 94025

Date and Time:

April 30, 2018 at 10:00 a.m.

☐ **Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: 04/17/2018

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) Sauve and Farish, who issues or requests this subpoena, are:

Neel Chatterjee, Goodwin Procter LLP, 135 Commonwealth Drive, Menlo Park, California 94025, (650) 752-3256

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action (Page 2)

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)*

I received this subpoena for *(name of individual and title, if any)* _____
 on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
 tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
 \$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

In re DMCA Subpoena to StarMaker Interactive Inc.

EXHIBIT A

Please produce documents sufficient to show:

- (1) For each user of StarMaker Interactive Inc. ("StarMaker") listed in Table 1 on the following page, all names, addresses, telephone numbers, e-mail addresses, cellular device IDs, Internet Protocol ("IP") addresses, IP logs, web server logs, and the profile names of linked social media accounts, such as Facebook accounts, associated with the user.
- (2) For each StarMaker user listed in Table 1, the length of time that each user has been a StarMaker user, the date the user's account was created, the date the account was terminated (if applicable), the account status, and all other user account information.
- (3) For each infringing song listed in Table 1, the web server logs, the IP address from which the post was made, the timestamp disclosing when the post was made, and all other available information and metadata relating to the posting of the song on the StarMaker Service.

Table 1: Infringing Works on StarMaker Service

No.	Artist	Song Title	Username of Uploader	m4a file URL
1.	P.I.O.C Episode 5 (Feat. xYego)	Chanticleer & _nic__	nan25_2000	https://static.starmakerstudios.com/production/songs/instrumental/33c77b87b0424a0313d163ae3d477bca.m4a
2.	P.I.O.C Episode 6 (Feat. HoonHans_ DavidK)	Chanticleer & _nic__	midngtdr mr	https://static.starmakerstudios.com/production/songs/instrumental/4b920063a64efad19db1dc267e6a0ddf.m4a
3.	P.I.O.C Episode 9 (It's Raining Tacos)	Chanticleer	pah817	https://static.starmakerstudios.com/production/songs/instrumental/cb530ab87c7cf54594ab5a27ba41749e.m4a



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RECEIVED

APR 17 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

April 17, 2018

BY HAND DELIVERY

CV 18 80068 MISC.

Office of the Clerk
U.S. District Court, Northern Dist. of California
450 Golden Gate Avenue
San Francisco, CA 94102

Re: Application for DMCA § 512(h) Subpoena

EDL

Dear Sir or Madam:

On behalf of my clients, Chantale Sauve ("Sauve") and Nicholas Farish ("Farish"), I respectfully request that the Clerk issue the enclosed subpoena pursuant to 17 U.S.C. § 512(h).

By way of background, Section 512(h) of the Digital Millennium Copyright Act provides that a "copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States District Court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection." 17 U.S.C. § 512(h)(1). For a subpoena to be issued, Section 512(h) requires that a copyright owner or its agent file the following with the Clerk:

- (1) A copy of the notification required by Section 512(c)(3)(A);
- (2) A proposed subpoena; and
- (3) A sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

Accordingly, enclosed are Sauve's and Farish's notification pursuant to Section 512(c)(3)(A), a proposed subpoena, and a sworn declaration. Pursuant to Section 512(h)(4), please expeditiously sign and return to me the enclosed proposed subpoena.

Thank you for your cooperation and prompt response in this matter. If you have any questions, I am reachable as noted above.



Clerk's Office
April 17, 2018
Page 2

Sincerely,

Neel Chatterjee



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RECEIVED

APR 17 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

April 17, 2018

VIA FEDEX AND EMAIL

Zhao Huang
Copyright Agent
StarMaker Interactive, Inc.
520 Hampshire St., Ste. 202
San Francisco, CA 94110
copyright@starmakerinteractive.com

CV 18 80068 MISC.

Re: DMCA Takedown Notice

EDL

Dear Ms. Huang:

This law firm represents Chantale Sauve ("Sauve") and Nicholas Farish ("Farish") in the protection and enforcement of their intellectual property rights. I am writing pursuant to the Digital Millennium Copyright Act ("DMCA") to notify you of infringing materials that are accessible on websites, apps and/or servers operated by Starmaker Interactive Inc. (the "StarMaker Service"). Specifically, Section A of the attachment to this letter contains a list of Sauve's and Farish's materials that they authorized to be accessible on Smule, Inc.'s websites, apps and/or servers (the "Smule Service"). The corresponding infringing materials accessible on the StarMaker Service are identified in Section B.

Pursuant to the DMCA, I represent the following:

- (1) Sauve and Farish hold the rights to enforce the copyrights to the materials described in Section A of the attachment to this letter;
- (2) The materials listed in Section A have been infringed by the copying and display of the materials described in Section B on the StarMaker Service;
- (3) I have a good faith belief that the use of the materials herein in the manner complained of is not authorized by the copyright owners, their agents, or the law;

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Page 2

- (4) The information in this notification is accurate. Under penalty of perjury, I believe that I am authorized to act on behalf of Sauve and Farish, who I understand are the owners of exclusive rights that have been allegedly infringed; and
- (5) My contact information is in the header of this letter.

Having been provided with notice of the claimed infringement in accordance with 17 U.S.C. § 512(c), please remove the infringing materials as soon as possible. Notwithstanding this request, please recognize that we are providing you with further notice to preserve all evidence and other information relating to this issue while we investigate this matter further. We anticipate the possibility that this matter could lead to litigation, for example, between Sauve and Farish and the party or parties responsible for posting the materials on the StarMaker Service. Consequently, please take all necessary steps to preserve and not alter any evidence pertaining to this matter.

This letter is not intended to contain a complete statement of facts with respect to the subject matter hereof, and Sauve and Farish do not waive any legal or equitable rights or remedies available to them, all of which are expressly reserved. We specifically reserve the right to supplement this notice to identify additional materials that may infringe.

Please call me at (650) 752-3256 to confirm your receipt of this letter. We appreciate your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Neel Chatterjee".

Neel Chatterjee

April 17, 2018
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ATTACHMENT

Section A: Table of Copyrighted Materials on Smule Service

No.	Artist	Song Title	Username of Uploader
1.	P.I.O.C Episode 5 (Feat. xYego)	Chanticleer & _nic__	_Nic__
2.	P.I.O.C Episode 6 (Feat. HoonHans DavidK)	Chanticleer & _nic__	_Nic__
3.	P.I.O.C Episode 9 (It's Raining Tacos)	Chanticleer	

Section B: Table of Infringing Materials of StarMaker Service

No.	Artist	Song Title	Username of Uploader	m4a file URL
1.	P.I.O.C Episode 5 (Feat. xYego)	Chanticleer & _nic__	nan25_2000	https://static.starmakerstudios.com/production/songs/instrumental/33c77b87b0424a0313d163ae3d477bca.m4a
2.	P.I.O.C Episode 6 (Feat. HoonHans DavidK)	Chanticleer & _nic__	midngtdr mr	https://static.starmakerstudios.com/production/songs/instrumental/4b920063a64efad19db1dc267e6a0ddf.m4a
3.	P.I.O.C Episode 9 (It's Raining Tacos)	Chanticleer	pah817	https://static.starmakerstudios.com/production/songs/instrumental/cb530ab87c7cf54594ab5a27ba41749e.m4a